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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
AKRON

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

5:01CV 1259

Case No.:

Judge: **JUDGE POLSTER**

DARLA M. EUBANKS
2520 Roberts Avenue, N.W., #11
Canton, Ohio 44709,

Plaintiff,

v.

SUMMACARE, INC.
400 West Market Street
Akron, Ohio 44309,

Defendant.

MAG. JUDGE LIMBERT

COMPLAINT

1. The plaintiff, Darla M. Eubanks, brings this action pursuant to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.*, and specifically pursuant to 29 U.S.C. § 1132(a)(1)(B), to recover benefits due to her under the terms of an employee welfare benefit plan, to enforce her rights under the terms of the plan, and/or to clarify her rights to future benefits under the terms of the plan.

2. The plaintiff is a participant in and/or beneficiary of the InfoCision Management Corporation Group Health Insurance Plan (the Plan). The Plan constitutes an employee welfare benefit plan within the meaning of ERISA.

3. Benefits under the Plan are provided under a group insurance contract entered into between the plaintiff's employer, InfoCision Management Corporation, and the defendant, SummaCare, Inc. Under the Plan, the defendant is a provider of healthcare benefits, is the claims administrator, and is responsible for paying claims.

4. The Plan is administered in Akron, Summit County, Ohio, and the defendant is a corporation doing business in the State of Ohio with its principal place of business located in Akron, Summit County, Ohio. Therefore, jurisdiction and venue are proper in this Court pursuant to 29 U.S.C. § 1132(e)(2).

5. On or about November 30, 2000, the plaintiff's gynecological physician, Victor H. Bazzoli, M.D., found pelvic surgery to be medically necessary and appropriate for the treatment of the plaintiff's severe pelvic pain caused by extensive pelvic adhesive disease involving extensive adhesions of the ovary to the pelvic wall and sigmoid colon. On or about January 5, 2001, a diagnostic laparascopy was performed upon the plaintiff and confirmed the extensive pelvic adhesive disease. On or about February 14, 2001, a second opinion by Bernhard Berger, M.D., a board certified gynecologist, agreed with Dr. Bazzoli's recommendation and found that the surgery should be done as soon as possible.

6. The defendant has wrongfully denied and continues to wrongfully deny to the plaintiff coverage and payment for the surgery, as described in paragraph 5, that is

medically necessary and appropriate for the diagnosis and treatment of the plaintiff's illness and medical condition.

7. The plaintiff has complied with and exhausted all applicable appeals and reviews specified under the Plan.

WHEREFORE, the plaintiff, Darla M. Eubanks, demands judgment against the defendant, SummaCare, Inc., for the following relief:

1. That the Court order the defendant to provide coverage and payment for the surgery, as ordered by her physician and described in paragraph 5, and to provide coverage and payment for all associated hospital, anesthesia, and other medical services.

2. That the Court allow to the plaintiff a reasonable attorney's fee and the costs of this action, pursuant to 29 U.S.C. § 1132(g)(1).

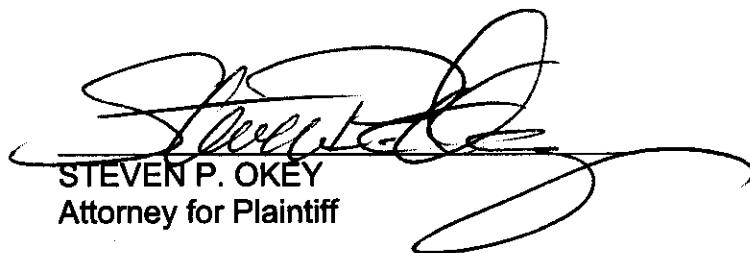


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SERVICE

Pursuant to Fed. R.Civ. P. 4(d) and LR 4.2, the plaintiff is notifying the defendant of the commencement of this action and requesting that the defendant waive service of the summons.



STEVEN P. OKEY
Attorney for Plaintiff